

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

Jesus Tapia,

Plaintiff,

v.

Davol, Inc., et al.,

Defendants.

Case No.: 15-cv-00179-GPC-JLB

**ORDER GRANTING EX PARTE  
MOTION AND ENTERING  
AMENDED SCHEDULING ORDER**

**[ECF Nos. 34, 41]**

For good cause shown, the unopposed Ex Parte Motion for Stay or, in the Alternative, Continuance of all Pretrial Deadlines (ECF No. 41) filed by Defendants is GRANTED. The scheduling order for this case (ECF No. 34) **IS HEREBY AMENDED** as follows:

1. All discovery, including expert discovery, shall be completed by all parties by **September 6, 2016**. “Completed” means that all discovery under Rules 30-36 of the Federal Rules of Civil Procedure, and discovery subpoenas under Rule 45, must be initiated a sufficient period of time in advance of the cut-off date, **so that it may be completed** by the cut-off date, taking into account the times for service, notice and response as set forth in the Federal Rules of Civil Procedure. **Counsel shall promptly and in good faith meet and confer with regard to all discovery disputes in compliance with Local Rule 26.1(a)**. The Court expects counsel to make every effort to resolve all disputes without court intervention through the meet and confer process. If the parties reach an impasse on any discovery issue, counsel shall file an appropriate motion within the time limit and procedures outlined in the undersigned magistrate

1 judge's chambers rules. **A failure to comply in this regard will result in a waiver of a**  
 2 **party's discovery issue. Absent an order of the court, no stipulation continuing or**  
 3 **altering this requirement will be recognized by the court.**

4 Discovery motions must be filed in the time and manner directed by Magistrate  
 5 Judge Burkhardt (*see* Judge Burkhardt's Civil Chambers Rules on Discovery Disputes  
 6 available on the Court's website). All discovery motions must be filed within 30 days of  
 7 the service of an objection, answer, or response which becomes the subject of dispute, or  
 8 the passage of a discovery due date without response or production, and only after  
 9 counsel have met and conferred to resolve the dispute **and** requested an informal  
 10 teleconference with the Court.

11 2. The parties shall designate their respective experts in writing by **July 19,**  
 12 **2016.** Pursuant to Fed. R. Civ. P. 26(a)(2)(A), the parties must identify any person who  
 13 may be used at trial to present evidence pursuant to Rules 702, 703 or 705 of the Fed. R.  
 14 Evid. This requirement is not limited to retained experts. The date for exchange of  
 15 rebuttal experts shall be by **August 16, 2016.** The written designations shall include the  
 16 name, address and telephone number of the expert and a reasonable summary of the  
 17 testimony the expert is expected to provide. The list shall also include the normal rates  
 18 the expert charges for deposition and trial testimony.

19 3. By **July 19, 2016,** each party shall comply with the disclosure provisions in  
 20 Rule 26(a)(2)(A) and (B) of the Federal Rules of Civil Procedure. This disclosure  
 21 requirement applies to all persons retained or specially employed to provide expert  
 22 testimony, or whose duties as an employee of the party regularly involve the giving of  
 23 expert testimony. **Except as provided in the paragraph below, any party that fails to**  
 24 **make these disclosures shall not, absent substantial justification, be permitted to use**  
 25 **evidence or testimony not disclosed at any hearing or at the time of trial. In**  
 26 **addition, the Court may impose sanctions as permitted by Fed. R. Civ. P. 37(c).**

27 4. Any party shall supplement its disclosure regarding contradictory or rebuttal  
 28 evidence under Fed. R. Civ. P. 26(a)(2)(D) and 26(e) by **August 16, 2016.**

5. All other pretrial motions, including those addressing Daubert issues related to dispositive motions must be filed by **September 20, 2016**. Pursuant to Honorable Gonzalo P. Curiel's Civil Pretrial & Trial Procedures, all motions for summary judgment shall be accompanied by a separate statement of undisputed material facts. Any opposition to a summary judgment motion shall include a response to the separate statement of undisputed material facts. Counsel for the moving party must obtain a motion hearing date from the law clerk of the judge who will hear the motion. Motion papers **MUST** be filed and served the same day of obtaining a motion hearing date from chambers. A briefing schedule will be issued once a motion has been filed. The period of time between the date you request a motion date and the hearing date may vary. Please plan accordingly. Failure to make a timely request for a motion date may result in the motion not being heard.

6. A Mandatory Settlement Conference shall be conducted on **November 3, 2016** at **1:45 PM** in the chambers of Magistrate Judge Jill L. Burkhardt, Edward J. Schwartz U.S. Courthouse, 221 West Broadway, Suite 5140, San Diego, California 92101. Counsel or any party representing himself or herself shall lodge confidential settlement briefs directly to chambers by **October 24, 2016**. All parties are ordered to read and to fully comply with the Chamber Rules of the assigned magistrate judge.

The **confidential** settlement statements should be lodged by e-mail to [efile\\_Burkhardt@casd.uscourts.gov](mailto:efile_Burkhardt@casd.uscourts.gov). Each party's settlement statement shall concisely set forth the following: (1) the party's statement of the case; (2) the controlling legal issues; (3) issues of liability and damages; (4) the party's settlement position, including the last offer or demand made by that party; (5) a separate statement of the offer or demand the party is prepared to make at the settlement conference; and (6) a list of all attorney and non-attorney attendees for that side, including the name(s) and title(s)/position(s) of the party/party representative(s) who will attend and have settlement authority at the conference. If exhibits are attached and the total submission amounts to more than 20 pages, a hard copy must also be delivered directly to Magistrate Judge

Burkhardt's chambers. **Settlement conference statements shall not be filed with the Clerk of the Court. Settlement conference statements may be exchanged confidentially with opposing counsel within the parties' discretion.**

Pursuant to Local Civil Rule 16.3, all party representatives and claims adjusters for insured defendants with full and unlimited authority<sup>1</sup> to negotiate and enter into a binding settlement, as well as the principal attorney(s) responsible for the litigation, must be present and legally and factually prepared to discuss and resolve the case at the mandatory settlement conference. In the case of a corporate entity, an authorized representative of the corporation who is not retained outside counsel must be present and must have discretionary authority to commit the company to pay an amount up to the amount of the Plaintiff's prayer (excluding punitive damages prayers). The purpose of this requirement is to have representatives present who can settle the case during the course of the conference without consulting a superior.

Failure to attend the conference or obtain proper excuse will be considered grounds for sanctions.

7. Pursuant to Honorable Gonzalo P. Curiel's Civil Pretrial & Trial Procedures, the parties are excused from the requirement of Local Rule 16.1(f)(2)(a); no Memoranda of Law or Contentions of Fact are to be filed.

8. Counsel shall comply with the pre-trial disclosure requirements of Fed. R. Civ. P. 26(a)(3) by **December 19, 2016**. Failure to comply with these disclosure requirements could result in evidence preclusion or other sanctions under Fed. R. Civ. P. 37.

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<sup>1</sup> "Full authority to settle" means that the individuals at the settlement conference must be authorized to fully explore settlement options and to agree at that time to any settlement terms acceptable to the parties. *Heileman Brewing Co., Inc. v. Joseph Oat Corp.*, 871 F.2d 648 (7th Cir. 1989). The person needs to have "unfettered discretion and authority" to change the settlement position of a party. *Pitman v. Brinker Int'l, Inc.*, 216 F.R.D. 481, 485-86 (D. Ariz. 2003). The purpose of requiring a person with unlimited settlement authority to attend the conference includes that the person's view of the case may be altered during the face to face conference. *Id.* at 486. A limited or a sum certain of authority is not adequate. *Nick v. Morgan's Foods, Inc.*, 270 F.3d 590 (8th Cir. 2001).

1           9. Counsel shall meet and take the action required by Local Rule 16.1(f)(4) by  
2 **January 5, 2017**. At this meeting, counsel shall discuss and attempt to enter into  
3 stipulations and agreements resulting in simplification of the triable issues. Counsel shall  
4 exchange copies and/or display all exhibits other than those to be used for impeachment.  
5 The exhibits shall be prepared in accordance with Local Rule 16.1(f)(4)(c). Counsel shall  
6 note any objections they have to any other parties' Pretrial Disclosures under Fed. R. Civ.  
7 P. 26(a)(3). Counsel shall cooperate in the preparation of the proposed pretrial  
8 conference order.

9           10. Counsel for plaintiff will be responsible for preparing the pretrial order and  
10 arranging the meetings of counsel pursuant to Civil Local Rule 16.1(f). By **January 12,**  
11 **2017**, plaintiff's counsel must provide opposing counsel with the proposed pretrial order  
12 for review and approval. Opposing counsel must communicate promptly with plaintiff's  
13 attorney concerning any objections to form or content of the pretrial order, and both  
14 parties shall attempt promptly to resolve their differences, if any, concerning the order.

15           11. The Proposed Final Pretrial Conference Order, including objections to any  
16 other parties' Fed. R. Civ. P. 26(a)(3) Pretrial Disclosures shall be prepared, served and  
17 lodged with the assigned district judge by **January 19, 2017**, and shall be in the form  
18 prescribed in and comply with Local Rule 16.1(f)(6).

19           12. The final Pretrial Conference is scheduled on the calendar of the **Honorable**  
20 **Gonzalo P. Curiel** on **January 27, 2017** at **1:30pm**. The Court will set a trial date  
21 during the pretrial conference. The Court will also schedule a motion in limine hearing  
22 date during the pretrial conference.

23           13. The parties must review the chambers' rules for the assigned district judge  
24 and magistrate judge.

25           14. A post trial settlement conference before a magistrate judge may be held  
26 within 30 days of verdict in the case.

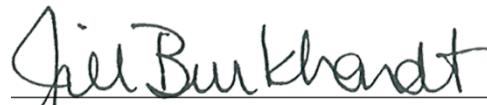
27           15. The dates and times set forth herein will not be modified except for good  
28 cause shown.

1           16. Briefs or memoranda in support of or in opposition to all motions noticed for  
2 the same motion day shall not exceed twenty-five (25) pages in length, per party, without  
3 leave of the judge who will hear the motion. No reply memorandum shall exceed ten  
4 (10) pages without leave of a district court judge. Briefs and memoranda exceeding ten  
5 (10) pages in length shall have a table of contents and a table of authorities cited.

6           17. Plaintiff's counsel shall serve a copy of this order on all parties that enter  
7 this case hereafter.

8           **IT IS SO ORDERED.**

9 Dated: April 12, 2016

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11 Hon. Jill L. Burkhardt  
12 United States Magistrate Judge  
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